

DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, CA 95814



July 12, 2002

Regulation Package #0202-04

CDSS MANUAL LETTER NO. CFC-02-01

TO: HOLDERS OF THE CONFIDENTIALITY, FRAUD, CIVIL RIGHTS AND STATE HEARINGS
MANUAL, DIVISION 20**Regulation Package #0202-04****Effective 5/1/02****Section 20-300**

This manual letter has been posted on the Office of Regulations Development website at http://www.dss.cahwnet.gov/ord/Confidenti_615.htm.

These regulations implement and make specific Assembly Bill 1542 (Chapter 270, Statutes of 1997) which established the authority for a statewide EBT system to issue food stamp benefits and, at county option, the issuance of cash benefits. An on-line EBT system is an issuance system in which benefits are stored in a central computer database and electronically accessed by cardholders at a point-of-sale (POS) terminal, automated teller machine (ATM), and other electronic fund transfer device utilizing a reusable plastic card. EBT is an extension of debit card access to benefit funds from POS terminals (or ATMs) via electronic fund transfer networks.

These regulations were adopted on an emergency basis effective May 1, 2002 and were considered at the Department's public hearings held on June 19 and 21, 2002.

FILING INSTRUCTIONS

Revisions to all manuals are shown in graphic screen. The attached pages are to be entered in your copy of the Manual of Policies and Procedures. The latest prior manual letter containing Confidentiality, Fraud, Civil Rights, and State Hearings Manual changes was CFC-99-03.

Page(s)Replace(s)40 through 43.1
4640 through 43.1
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Attachments

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.221 CWDs using the Disqualification Consent Agreements shall conform with the following requirements:

(a) Advance written notification shall be sent to the accused household member which informs the individual of the consequences of consenting to disqualification. This written notification shall include, at a minimum, the following:

(1) A statement for the accused individual to sign that the individual understands the consequences of consenting to disqualification, accompanied by a statement that the head of household must also sign the Disqualification Consent Agreement, if the accused individual is not the head of household.

(2) A statement that consenting to disqualification will result in disqualification and a reduction in benefits for the period of the disqualification, even though the accused individual was not found guilty of civil/criminal misrepresentation or fraud.

(3) A warning of the disqualification penalties which could be imposed (as provided in Section 20-300.31) and a statement of which penalty shall be imposed as a result of the respondent having consented to disqualification.

(4) A statement that any remaining household members shall be held responsible for repayment of the resulting claim, unless the accused individual has already repaid the claim.

(b) The Disqualification Consent Agreement shall contain statements indicating whether the respondent wishes to admit that facts as presented are correct. Those statements shall be worded as follows:

(1) I admit to the facts as presented and understand that a disqualification penalty shall be imposed if I sign this Disqualification Consent Agreement.

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- (2) I do not admit that the facts as presented are correct. However, I have chosen to sign this Disqualification Consent Agreement and understand that a disqualification penalty shall result.

 - (c) After a respondent has signed a Disqualification Consent Agreement and a disqualification penalty has been imposed, no further administrative appeal procedure exists. The disqualification penalty cannot be changed by a subsequent Administrative Disqualification Hearing or a state hearing decision. The respondent, however, is entitled to seek relief in a court having appropriate jurisdiction.
- .23 Administrative Disqualification Hearing
- Those cases in which the prosecuting authority has determined (a) that facts do not warrant prosecution, or (b) those cases previously referred for prosecution and declined, shall be returned to the CWD and the CWD shall initiate referral action for an administrative disqualification hearing through the CDSS in accordance with CDSS' Manual of Policies and Procedures, Division 22.
- .24 The CWD shall not initiate an administrative disqualification hearing against an accused individual whose case is currently being referred for prosecution or subsequent to any action taken against the accused individual by the prosecutor or court of the appropriate jurisdiction, if the factual issues of the case arise out of the same or related circumstances.
- .25 If the Administrative Disqualification Hearing or the court finds that the household member committed an IPV, or if the accused individual has signed a Disqualification Consent Agreement or a Waiver of Right to an Administrative Disqualification Hearing, the CWD shall mail an Administrative Disqualification Notice (DFA 377.7A) to the household member.

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Following an administrative hearing or a Waiver of Right to an Administrative Disqualification Hearing, the notice shall be sent prior to the disqualification action. The notice shall inform the household member of the decision, the reason for the decision, and the date the disqualification will take effect. The notice shall also advise the remaining household members of the allotment that they will receive during the disqualification period, or that they may reapply after the disqualification period ends. If the individual is no longer participating, the notice shall inform the individual that the period of disqualification shall start as if the individual was in fact eligible. In addition, the CWD shall send the household a Repayment Notice (DFA 377.7B) and a Repayment Agreement (DFA 377.7C) for restitution as specified in CDSS' Manual of Policies and Procedures, Division 63, Section 63-801.43. The procedures for handling the income and resources of the disqualified member shall be in accordance with regulations in CDSS' Manual of Policies and Procedures, Division 63, Section 63-503.441.

.3 Disqualification Penalties

.31 Individuals found to have committed an IPV shall be ineligible to participate in the Food Stamp Program as follows:

.311 Except as specified in Sections 20-300.312, .313, .314, and .315, twelve months for the first violation, twenty-four months for the second violation, and permanently for the third violation.

(a) For the penalties specified in Section 20-300.311 above, the individual(s) shall have been found to have committed the IPV either through an administrative disqualification hearing or by a court of appropriate jurisdiction.

.312 Twenty-four months for the first violation and permanently for the second violation of trading food stamp benefits for a controlled substance, as defined in Section 102 of the Controlled Substance Act (21 USC 802).

HANDBOOK BEGINS HERE

21 USC 802(6) provides:

"The term 'controlled substance' means a drug or other substance, or immediate precursor, included in schedule I, II, III, IV, or V of part B of this subchapter. The term does not include distilled spirits, wine, malt beverages, or tobacco, as those terms are defined or used in subtitle E of the Internal Revenue Code of 1954."

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- (a) For the penalties specified in Section 20-300.312 above, the individual(s) shall have been found to have committed the IPV by a court of appropriate jurisdiction.
- .313 Permanently for the first violation for trading food stamp benefits for firearms, ammunition, or explosives.
 - (a) For the penalties specified in Section 20-300.313 above, the individual(s) shall have been found to have committed the IPV by a court of appropriate jurisdiction.
- .314 For a 10-year period for falsifying the identity or place of residence of the individual in order to receive multiple food stamp benefits simultaneously.
 - (a) For the penalty specified in Section 20-300.314, the individual(s) shall have been found to have committed the IPV either through an administrative disqualification hearing or by a court of appropriate jurisdiction.
- .315 Permanently for trafficking food stamp benefits of \$500 or more. For purposes of this subsection, trafficking is defined in 7 USC 2024(b) and (c).
 - (a) For the penalty specified in Section 20-300.315, the individual(s) shall have been found to have committed an IPV by a court of appropriate jurisdiction.
- .32 The disqualification penalties shall apply only to individuals disqualified for IPV's which occurred during a certification period after the household has been notified by the CWD of the new disqualification penalties. If the IPV which led to the disqualification occurred prior to April 1, 1984 or prior to the household's notification of the disqualification penalties, the individual(s) shall be disqualified in accordance with the Food Stamp Program's disqualification penalty regulations in effect at the time of the individual's offense.

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- .53 The CWD shall be permitted to use information contained in the food stamp disqualification file for the following purposes:
 - .531 To screen all program applicants prior to certification; and
 - .532 To match the entire disqualification file against the current caseload.
- .54 CWDs shall submit revisions to original disqualification reports when the disqualification is reversed by a court of appropriate jurisdiction.

NOTE: Authority cited: Sections 10072, 10553, 10554 and 18901, Welfare and Institutions Code. Reference: Sections 10553, 10554 and 18901, Welfare and Institutions Code, Public Law (PL) 103-66, Section 13942; PL 104-193, Sections 813, 814, and 820 (Personal Responsibility and Work Opportunity Reconciliation Act of 1996); 7 USC 2024(b) and (c); 21 USC 802; USDA Food and Consumer Services, Administrative Notice No. 94-04 dated October 8, 1993; and Garcia and Zellar v. Concannon et al.

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